

**August 8, 2011**

**Re: Rescission of Amendment of Rule 7.3 of the Michigan Rules of Professional Conduct and Proposed Amendment of Rule 7.3 of the Michigan Rules of Professional Conduct**

Michigan should have even stricter rules on attorney solicitation. The Court's decision to back away from its proposed rule to stop attorney solicitation of personal injury victims from being preyed upon after an accident for 30 days is bad news for our image, the profession as a whole, and for accident victims.

It's distasteful, to say the least, for anyone to be in an [auto accident](#) and then to start getting letters and advertising materials from accident attorneys in the mail in the days that follow. This certainly is not helping our professional reputation as lawyers. The glaring weakness here is that this rule only addresses attorneys. I understand there is little we can do about non-lawyers soliciting, but this exception is now being taken advantage of by lawyers teaming with chiropractors and other groups.

And why single out the lawyers who are contacting people right after accidents? The insurance companies are starting to do this too. Adjusters and investigators are trying to settle potentially very significant claims, often for pennies on the dollar, by throwing in a few hundred dollars while negotiating mini-torts. We need to protect the public from the "Michigan accident services" out there that are these quasi-medical-legal front organizations that are being formed, I believe, by lawyers to specifically skirt the law on contacting and soliciting Michigan personal injury and accident victims. They not only contact, but they call and call and call, and then investigators show up with the lawyer information packages and the contingent fees of lawyers these people have never spoken to or have even heard of. These cases are then funneled to these lawyers. This is "running" but on a more sophisticated level.

What all of these concerns have in common is they all fail the public trust. We are not protecting the public, but we are instead opening them up to be pounced upon with these exceptions and weak time limitations such only having a 30-day no contact period. Accident victims should be protected from all groups, not just some.

That's why the Michigan Supreme Court's announcement that it was re-evaluating the no solicitation for 30 days rule on July 19, 2011 is so troubling. Originally, the Michigan Supreme Court proposed two restrictions on attorneys' ability to solicit legal business from personal injury victims. The Court suggested that accident attorneys be barred from soliciting victims in writing within 30 days of the victim's accident. And, the court suggested that all written solicitations of business must include the words "advertising material."

I originally applauded the Michigan Supreme Court for its proposed restrictions because they will go a long way to protecting personal injury victims and shutting down the predatory practices of unscrupulous "ambulance chasing" attorneys.

But there's a lot more the justices need to do, assuming they do not back down here:

1. Implement a 90-day waiting period for attorneys' written solicitations.
2. Impose restrictions on insurance companies' "settlement solicitations."
3. Extend the existing phone-solicitation ban to so-called "accident service agencies" and cold-calling doctors and law firm runners.

### **Why a 90-day waiting period for lawyers to contact car accident injury victims is better than nothing, but does not go far enough**

The Michigan Supreme Court's original proposal of a 30-day waiting period for attorneys' written solicitations of business is commendable because it's far better than the status quo: nothing. No waiting period.

But a 90-day waiting period is still better. Many injuries are just beginning to be uncovered, or are initially masked by strong narcotic pain medications. Many [traumatic brain injuries](#), especially from car accidents, take several months to first be documented.

A 90-day waiting period would provide personal injury victims with greater privacy and protection from unsolicited intrusion. And by making timing less of an issue, it may discourage lawyers from the shameful practice of using the Freedom of Information Act (FOIA) to request police/accident reports and, then, sending solicitation letters to the accident victims identified in the reports.

### **Insurance company 'settlement solicitations'**

All of the existing and proposed restrictions on attorney solicitations should apply with equal, if not greater, force to insurance companies' "settlement solicitations." Most states have already stopped this abusive anti-consumer practice as the unauthorized practice of law, and it needs to be stopped in Michigan now.

In fact, the Michigan Supreme Court's rationale for restricting attorney solicitations makes just as much sense when applied to insurance company "settlement solicitations" (substituting "insurance company" for "lawyer"):

**"There is a potential for abuse inherent in direct contact by [an insurance company] with a prospective client known to need legal services.** These forms of contact between [an insurance company] and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult to evaluate fully all available alternatives with reasoned judgment and appropriate self-interest in the face of the [insurance company's] presence and insistence upon [settling the

claim] immediately. The situation is fraught with the possibility of undue influence, intimidation, and overreaching.” (Comment to Rule 7.3 of the Michigan Rules of Professional Conduct)

Insurance company “settlement solicitations” occur when an insurance company “closer” ambushes the personal injury victim at his or her home within hours of or the next day after the accident and tries to “solicit” a quick, low-ball settlement before the victim hires an attorney.

Insurance companies know that victims with experienced attorneys settle claims for four times as much as victims without lawyers.

### **Michigan attorneys shouldn't be the only ones barred from phone solicitations and contact with personal injury victims**

Accident attorneys should not be the only ones banned from using the telephone to solicit legal business from personal injury victims.

The phone-solicitation restriction, under both the existing and proposed restrictions in and to Rule 7.3 of the Michigan Rules of Professional Conduct, should also apply to phony “accident service agencies,” which are really just people paid by law firms to steer prospective clients to the law firm.

Additionally, the phone-solicitation restrictions should also be extended to physicians. Shockingly, I’m hearing with increasing frequency from clients about cold-calls they have received at home or in the hospital from doctors, especially chiropractors.

### **Let's do more**

Again, the Michigan Supreme Court’s initial proposed restrictions on contacting personal injury victims are laudable. I hope they do not back down from this as they “re-evaluate” this rule.

But instead of allowing those restrictions to be the final word, let’s treat them as the beginning of the bigger discussion on how we as the bar can best protect the public, and how we wish to be in turn perceived by the public we serve. Attorneys are not in the business of law, but in the business of protecting the public.

Let’s bring true protection to Michigan personal injury and accident victims.

Steven M. Gursten  
Michigan Auto Law (Gursten, Koltonow, Gursten, Christensen & Raitt, PC)  
30101 Northwestern Highway  
Farmington Hills, MI 48334  
[www.michiganautolaw.com](http://www.michiganautolaw.com)